

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:KYT:NAS:TL-N-1288-99
HPLevine, ID# [REDACTED]

VIA HAND-DELIVER

date: JAN 24 2000

to: Chief, Examination Division, Kentucky-Tennessee District
Attention: Revenue Agent Jackie Abraham

from: District Counsel, Kentucky-Tennessee District, Nashville

subject: [REDACTED]

DISCLOSURE STATEMENT

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ISSUES:

1. Whether the election to be treated under the TEFRA procedures was timely and proper?
2. Whether the TEFRA proceeding is affected by the fact that both partners of the TEFRA partnership were consolidated subsidiaries of the taxpayer?

CONCLUSIONS:

1. The election to be treated under the TEFRA procedures was timely and proper.

2. The TEFRA proceeding is not affected by the fact that both partners of the TEFRA partnership were consolidated subsidiaries of the taxpayer.

FACTS AND DISCUSSION:

██████████ is under examination. ██████████ is the parent of a number of subsidiaries including ██████████ of ██████████ and ██████████ of ██████████, who are the only two partners of the ██████████ partnership. ██████████ of ██████████ is the general and a limited partner and ██████████ of ██████████ is a limited partner. ██████████ has always filed partnership Forms 1065, designating a tax matter partner. For taxable years ending after August 5, 1997, the TEFRA provisions were changed, and the small partnership exception applied after that time to partnerships with less than ten partners even if the partners were C corporations. I.R.C. § 6231(a)(1)(B). ██████████ was unaware of the tax law change until brought to its attention by the Internal Revenue Service. For taxable years ending after August 5, 1997, a partnership meeting the small partnership exception was required to elect to be treated as a TEFRA partnership. On or about ██████████, the ██████████ partnership provided the Internal Revenue Service with an election to have the consolidated audit rules apply. The election was signed by the treasurer of both corporate partners.

I.R.C. § 6231(a)(1)(B)(ii) provides that a taxpayer can elect to have the consolidated TEFRA audit rules apply. The election is valid for the taxable year in which it was made and all subsequent years unless revoked with consent of the Secretary. I.R.C. § 7805(d) provides that any election required to be made under the Internal Revenue Code shall be made at the time and manner as prescribed by the Secretary.

Temporary Treas. Reg. § 301.6231(a)(1)-1T provides guidance on the small partnership exception.¹ Under Temporary Treas. Reg. § 301.6231(a)(1)-1T, the election was generally required to be made by filing a statement at the time that the partnership return for the first taxable year in which the election was to be


¹ Temporary Treas. Reg. § 301.6231(a)(1)-1T was published in the Federal Register on March 5, 1987 and March 24, 1987. While a temporary regulation usually expires automatically pursuant to a sunset provision contained in I.R.C. § 7805(e)(2), the sunset provision is effective only for regulations issued after November 20, 1988. Therefore, Temporary Treas. Reg. § 301.6231(a)(1)-1T is still applicable.

effective.² However, the regulation also allows for an election to be filed prior to the date one year before the statute of limitations expires if it pertains to a taxable year for which a partnership return is to be filed before 90 days after the date final regulations are published in the Federal Register. This provision is ambiguous and can be read to mean different things. one interpretation is that until final regulations are published, a taxpayer can make an election in a manner other than on a tax return.³

In order to make the election, the taxpayer must identify the election and it must be signed by all persons who were partners for the taxable year in which the election is to be made. The election in this case does identify the type of election made. It was also signed by an individual who was the treasurer for both corporate partners. The signature block reflects that capacity for both corporate partners. Under I.R.C. § 6062, a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other person authorized at act. The Internal Revenue Service takes the position that a person who is authorized to sign a corporate income tax return can also sign a statute extension. The authority to sign the election on behalf of the corporate partners in this case is based on corporate authority. Since the treasurer has the authority to bind the corporations and sign the corporate income tax returns, we believe that he is also authorized to sign the elections.

² Rev. Proc. 83-8, 1983-1 CB 639 was issued to provide guidance on elections to have the TEFRA procedures apply where they would otherwise not apply since the taxable year began prior to September 3, 1982. Since this election concerns a different issue under the TEFRA procedures and since Temporary Treas. Reg. § 301.6231(a)(1)-1T squarely addresses the issue present in this case and is still applicable, we do not believe that Rev. Proc. 83-8 has any relevance to the election made in this case. The biggest differences were that Rev. Proc. 83-8 required the election to be made under penalties of perjury and further required the election to be made by the tax matters partner and not the partners as required under the treasury regulation.

³ (b)(7)e



In summary, we believe that the election to be treated under the unified audit rules is valid.

The two corporate partners of the partnership are both members of a consolidated group. The consolidated regulations deal with agency and are not per se a unified audit procedure.⁴ Moreover, there is no exception in the TEFRA procedures which excepts the subsidiaries from application of the unified audit procedures. Therefore, we do not believe that this has any impact on the applicability of the TEFRA unified audit rules.

Because the election issue involves an interpretation of the treasury regulation, we are sending this to our National Office for post-review. In the interim, we suggest that you proceed with the issuance of the notice of beginning of partnership proceeding (NBAP) or take whatever action is necessary on your part to commence the examination.

Please contact the undersigned at 250-5072 if you have any questions. Attached is a client survey which we request that you consider completing. The client survey is an attempt to measure your satisfaction with the service provided by this office. We expect to be able to use your response to improve the services that we provide to you.

JAMES E. KEETON, JR.
District Counsel

By:

HOWARD P. LEVINE
Senior Attorney

Attachment:
Client survey

⁴ The consolidated regulations allow the Internal Revenue Service to deal with a common parent who can bind the subsidiaries. The liability on a consolidated return is joint and several between the parent and the subsidiaries.